

REMARKS

The applicants have rewritten claims to define the invention more distinctly so as to overcome the technical rejections and define the invention patentably over the prior art.

The currently amended claims put the invention patentable over Bertolucci USPN 4,981,146 and Michelson USPN 6,445,955.

Claims 1-8 and 10-12 are not anticipated by the Bertolucci USPN 4,981,146 or the Michelson USPN 6,445,955. To anticipate an invention, a prior art reference must teach each and every element of the invention. Bertolucci USPN 4,981,146 or Michelson USPN 6,445,955 does not teach each and every element of the present invention.

In the structure aspect, the Bertolucci USPN 4,981,146 teaches a device having electrode on the housing or wristband. The device does not have any external electrode; therefore it cannot stimulate position other than P6 point. The currently claimed device has external electrode(s). Because of the existence of the external electrode(s), it can stimulate positions (e.g. HeGu, near the thumb) not on the wrist, which is critical for its pain relief function.

The Michelson USPN 6,445,955 teaches a wireless transcutaneous electrical neuro or muscular stimulation device having external electrodes. The Michelson device comprises three components: an electronics module housing, a worn-remote controller, and a plurality of electrodes. The worn-remote controller controls the electronics module housing to emit desired stimulation pulse and the power supply is integrated with the electrodes. The band-aid like attachment means is on the electrode(s) and the electronics module housing does not have any fastening means directly on it. In currently claimed invention, there is no worn-remote controller; both the control and power supply are integrated with the housing. The housing also has a fastening means directly connects with it.

Claims 13 and 16 are cancelled. Claims 14,15,17 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bertolucci USPN 4,981,146 or Michelson USPN 6,445,955. The rejections are respectfully traversed on the ground that the cited references do not disclose all of the elements of the rejected claims, and moreover, the proposed combination of Bertolucci USPN 4,981,146 or/and Michelson USPN 6,445,955 with the acupuncture points is motivated by hindsight reconstruction of the claimed invention.

The Bertolucci device is for nausea control, which does not teach the present invention's method for controlling pain. Moreover, the Bertolucci device is structurally different from the currently claimed device.

The Michelson's method of pain relieving comprising a step of affixing a plurality of electrodes to a treatment site or other area requiring electrical neural or muscular stimulation of a user's body. However, it fails to teach any specific acupuncture sites, stimulation of which may relief pain of other body parts. In the present invention, the method is to use the device to relief pain by stimulating at certain acupuncture positions independent of the nature and location of the pain. Moreover, the Michelson device is structurally different from the currently claimed device.

Accordingly, Bertolucci USPN 4,981,146 or Michelson USPN 6,445,955 in combination with the acupuncture points does not disclose all the elements of the rejected claims 14-18.

Furthermore, the proposed combination of Bertolucci USPN 4,981,146 or/and Michelson USPN 6,445,955 with acupuncture points is simply a hindsight reconstruction of the claimed invention and is not based on a motivation to combine that is described in either of the references or would have been known to a person of ordinary skill in the art.

"When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references." In re Rouffet, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998); see also MPEP 2143.01. Virtually all inventions are combinations of old elements. To prevent the use of hindsight based on the teachings

of prior art references, the patent office must show a motivation to combine the references in the manner suggested In re Rouffet, at 1457-1458.

The Bertolucci device is technologically impossible to stimulate acupuncture points other than the P6 point. The Bertolucci device and the Michelson device are technologically impossible to incorporated into each other.

Accordingly there is lack of motivation or suggestion to combine that is either described in the prior art references or would have been known to an ordinary skilled in the art.

For the forgoing reason, the application respectfully submits that the Office Action fails to set forth a *prima facie* case of obviousness of claim 14-18. Accordingly, the rejection of claim 14-18 under §103 is improper and should be withdrawn.

All rejections and objections having been addressed, it is respectfully submitted that the present application is now in condition for allowance and notice to that effect is earnestly requested.

Respectfully submitted,

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